IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2005

Coram :

THE HONOURABLE MR.MARKENDEY KATJU, THE CHIEF JUSTICE

and

THE HONOURABLE MR.JUSTICE D.MURUGESAN

Writ Appeal No.4187 of 2004

Tamilnadu State Transport Corporation
(Villupuram Division II) Ltd.,
represented by its Managing Director,
Vellore. Appellant

v.

1. C.Durai

2. The Secretary,
Regional Transport Authority,
Tiruvannamalai District. Respondents

Writ Appeal is filed under Clause 15 of the Letters Patent against the order made in writ petition No.37480 of 2003 dated 12.10.2004.

For Appellant : Mr.Thiagarajan SC for
Mr.L.G.Sahadevan

For Respondent 1 : Mr.M.Palani

For Respondent 2 : Mr.V.Raghupathi,
Government Pleader

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JUDGMENT

(Judgment of the Court was delivered by
the Honourable the Chief Justice)

This writ appeal is filed against the impugned judgment of the learned single Judge dated 12.10.2004.

2. We have heard the learned counsel for the parties. The writ petition was filed against the order of the Regional Transport Authority dated 01.09.2003 issuing a permit in favour of the Tamil Nadu State Transport Corporation, Villupuram Division II, to ply on the route Tiruvannamalai to Melpacher. In our opinion, the writ petition should not have been entertained at all, in view of the fact that an alternative remedy of either filing an appeal under Section 89 of the Motor Vehicles Act, 1988 or a revision under Section 90 of the Motor Vehicles Act is available.

3. Although it is true that an alternative remedy is not an absolute bar to a writ petition, yet in our opinion, the ordinary rule should ordinarily be followed that when there is an alternative remedy, a writ petition should not ordinarily be entertained.

4. Learned counsel for the first respondent submits that when there is violation of natural justice or when the order is without jurisdiction, then a writ petition can be entertained, vide Baburam v. Zila Parishad, AIR 1969 SC 556. We have already observed that it is true that an alternative remedy is not an absolute bar to a writ petition, particularly, when there is violation of natural justice or when the order is without jurisdiction. However, we are of the opinion that even if there is violation of natural justice or even if the order is without jurisdiction, the writ petition can yet be dismissed, and ordinarily it should be dismissed, if there is equal efficacious alternative remedy. The decision of the Supreme Court in the case of Baburam v. Zila Parishad (supra), which states that if there is violation of natural justice or when the order is without jurisdiction, alternative remedy is not a bar, in our opinion, cannot amount to mean that a writ petition cannot be dismissed, if violation of natural justice or lack of jurisdiction is shown. In our opinion, even if there is violation of natural justice or the order is without jurisdiction, the writ petition can still be dismissed if there is an alternative remedy.

5. In U.P. State Bridge Corporation Ltd. v. U.P. Rajya Setu Nigam Karmchari Sangh, (1998) 4 SCC 268, the Supreme Court held that if there is a specific remedy available under a statute a writ petition should not be entertained.

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6. In the present case, there is an alternative efficacious remedy under Section 89/90 of the Motor Vehicles Act, 1988. In our opinion, the State Transport Appellate Tribunal has inherent power of granting stay during the pendency of proceedings under section 89/90 of the Act in an appropriate case.

7. Hence, the writ petition should not at all have been entertained by the learned single Judge and should have been straight away dismissed on the ground of alternative remedy.

8. This Court is already overburdened with huge number of cases and if writ petitions are entertained eventhough there is provision for an alternative remedy, the time will soon come when this Court will be so much overburdened that it may become impossible for this Court to function.

9. For instance, if a decree is passed by a Munsif, then there is a provision for filing an appeal under Section 96 of the Code of Civil Procedure. Even if the judgment of the learned Judge was without jurisdiction or was passed in violation of natural justice, yet a writ petition should not be entertained against the decree, and instead the aggrieved party should be relegated to his remedy of appeal under Section 96 of the Code of Civil Procedure.

10. In our opinion, no writ petition should ordinarily be entertained, when there is an alternative remedy, except in very rare cases if there is some compelling reason. In the present case, we are of the opinion that the learned single Judge was not justified in entertaining the writ petition at all and should have dismissed it on the ground of alternative remedy. The impugned order is set aside. The writ petition is dismissed. However, we direct that the copy of the order of the Regional Transport Authority dated 01.09.2003 regarding time conference be supplied to the writ petitioner forthwith, if he so requests for the same.

11. The writ appeal is allowed. No costs. Consequently, WAMP. No.7937 of 2004 is closed.

mf

Sd/
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Copy to

The Secretary,
Regional Transport Authority,
Tiruvannamalai District.

2. The Managing Director,
The Tamil Nadu State Transport
Corporation, (villupuram) Ltd.,
Rengapuram, Vellore 632 009.

+ 1 cc to Mr.L.G.Sahadevan, Advocate SR 167

+ 1 cc to Mr.M.Palani, Advocate SR 133.

WA.No.4187 of 2004

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